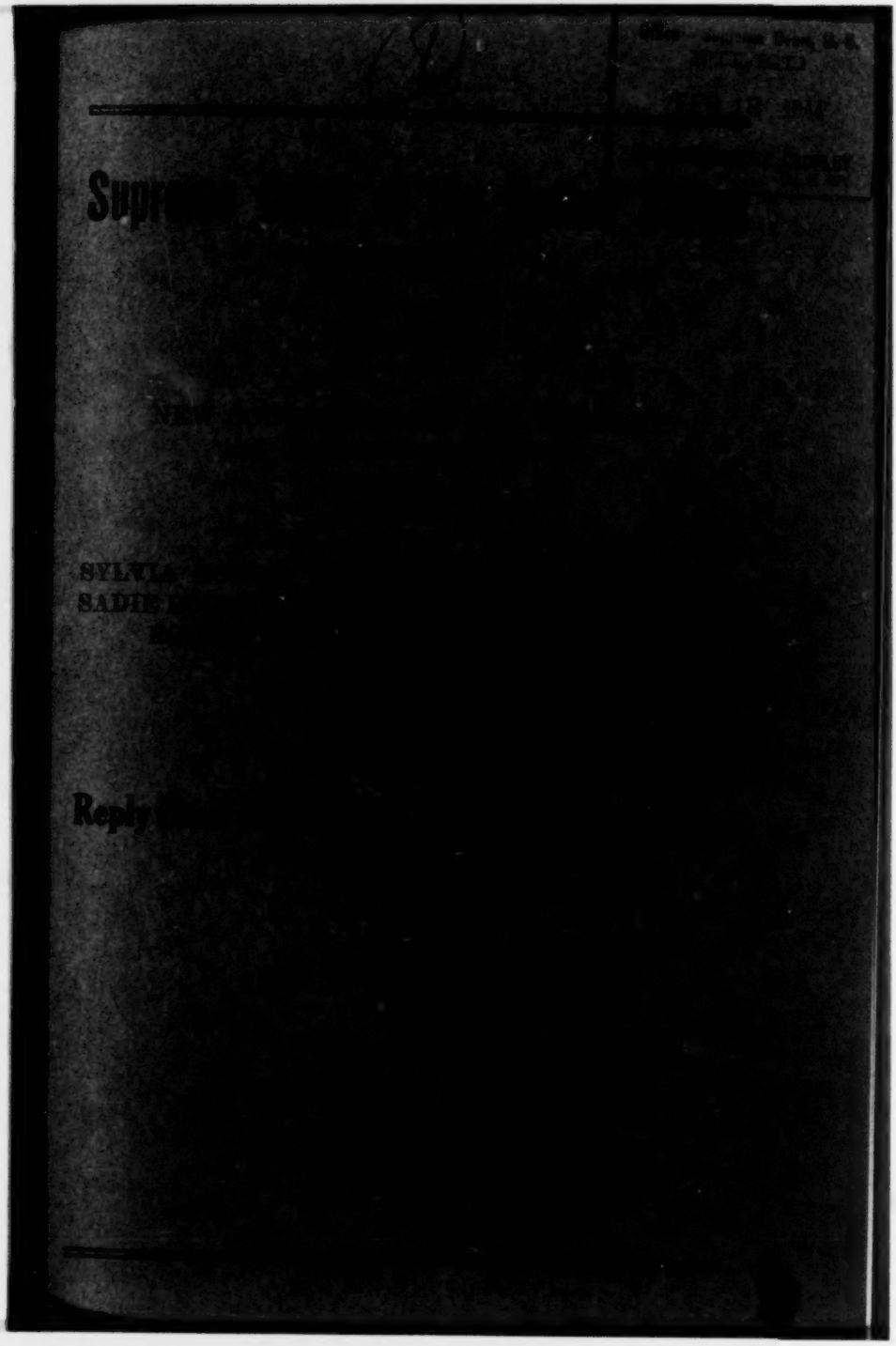
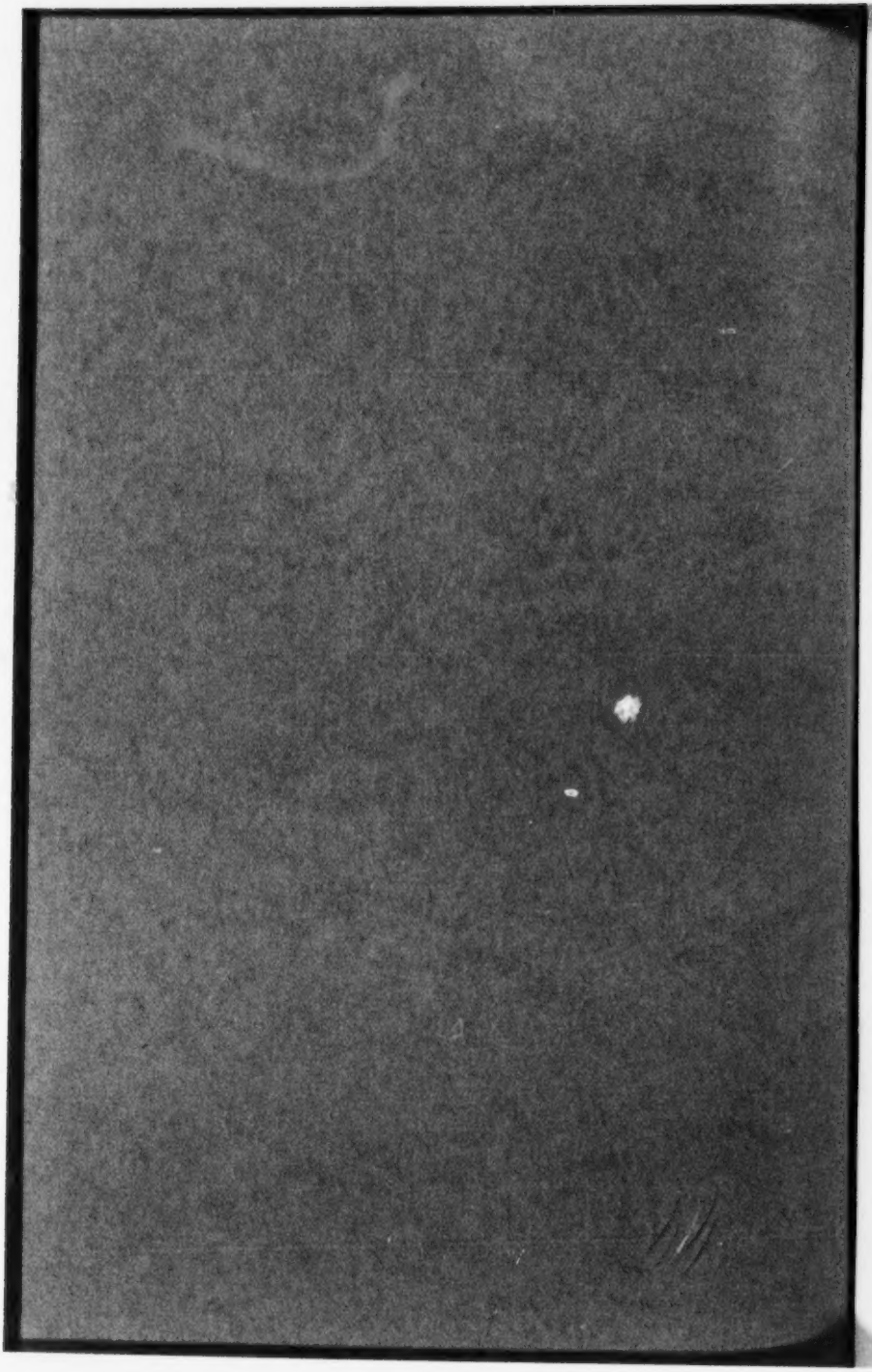




Supreme Court of the United States

OCTOBER TERM, 1943

No. 618

NEW SOUTHERN OHIO GAS COMPANY
and CHARLES EBERSBACH,
Petitioners,

vs.

SYLVIA ROUSH, WILBUR ROUSH, EBER ROUSH, SADIE ROUSH GRINDLEY, GEORGE ROUSH, FLORA ROUSH, FLOSSIE ROUSH and LILLIAN ROUSH DURST,
Respondents.

Reply Brief of Petitioners for Writ of Certiorari

We feel that this short reply brief is adequate, but if a more complete analysis of any portion of respondents' brief is desired it will be readily found in the Appendix, which is not submitted as a part of this brief, but is attached for possible convenience.

I. The cases cited on page 7, holding that a writ of certiorari will not be granted to review evidence, are not in point because the petitioners seek no such relief.

II. The cases cited on pages 8 and 9, in an attempt to show lack of conflict, are mostly not in point. To the ex-

tent that they are in point (e. g. Kuhn v. Princess Lida of Thurn & Taxis, 3 Cir.) they demonstrate the conflict complained of.

III. The argument on page 10 is based upon assumed facts not supported by the record, and in fact largely contradicted by the record.

IV. and V. The remainder of the brief is devoted to argument on the merits and not on the question now before the court.

The foregoing disposes of all of the brief except the Statement. This case does not turn upon facts, but upon the proper construction of a written order of the court. However, we do respectfully challenge one sentence appearing on page 5 of respondents' brief:

> "Mr. Parker stated before Hon. G. H. Butt, referee, that his clients were relying on an oral order made by Judge Hough, district judge."

Counsel for petitioners made no such statement. Counsel for respondents well know that the transcript of the hearing or oral argument before the referee, to which they refer, has not been made a part of the record because it is not pertinent to the question appealed, namely, the proper construction of the order of June 26, 1936.

Petitioners claim nothing for said transcript. If respondents had intended to claim anything for it they should have had it included in the record either at the time of the designation or later when they added a supplement to the record. If respondents produce the record it will not show the alleged statement nor anything like it. On the contrary, it *will* show that counsel stated repeatedly that New Southern Ohio Gas Company was relying upon and asking for the carrying out of the written order of June

26, 1936, which he read at the request of the referee, and a copy of which the referee marked "Exhibit 3". All of this would be found on pages 6, 7, 8, 9, 22 and 37 of that transcript. Furthermore, on page 25 would be found the following:

> "THE REFEREE: That being true, I have asked counsel upon each side whether or not the orders in question were those which had been marked Exhibits 1, 2, and 3 in this case were the only orders in point and I believe *it has been agreed that these are the only orders in point* upon this question. [Italics ours]
> MR. ROWE: That is right"

"Exhibit 3" above referred to is a copy of the bankruptcy court's order filed June 26, 1936. It was not oral. It was written. Petitioners rely and have always relied on that written order. They have never relied and have never stated that they relied on an oral order.

In view of the foregoing we feel that the Court will find it unnecessary to read, and probably even unnecessary to refer to, the Appendix attached to this brief.

Respectfully submitted,

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DAVID H. THOMAS,
Of Counsel.